

# TABLE OF CONTENTS

Preface.....	xi
Acknowledgement.....	xii
Table of Cases.....	xv
Table of Statutes.....	xxi

## Part I

### Chapter 1 - Central Bank of Kenya

1.1 Introduction.....	3
1.2 Capital and Reserves.....	6
1.3 Management.....	6
1.4 Currency.....	11
1.5 External Relations.....	12
1.6 Regulations of Foreign Exchange Dealings.....	13
1.7 Relations with Specified Banks.....	15
1.8 Relations with Public Entities.....	15
1.9 Currency.....	17
1.10 Prohibited Operations.....	17
1.11 Financial year.....	17

### Chapter 2 - Bank

2.1 Introduction.....	19
2.2 Restrictions on Carrying on Banking Business.....	19
2.3 Licensing.....	19
2.4 Amalgamations and Transfers of Assets and Liabilities.....	22
2.5 Prohibitions and Restrictions in Respect of Banking and Financial Business.....	24
2.6 Accounts and Audit.....	25
2.7 Information and Reporting Requirements.....	27
2.8 Inspection and Control of Institutions.....	28
2.9 Power of the Central Bank to Appoint Manager.....	29
2.10 Liquidation of Institutions.....	31

2.11 The Deposit Protection Fund Board.....	32
2.12 Increase in Bank Charges.....	35
2.13 Disqualification of Officers.....	35
2.14 Misleading Advertisements for Deposits.....	35

### **Chapter 3 - Building Societies**

3.1 Introduction.....	37
3.2 Formation and Registration.....	37
3.3 Management of Building Societies.....	41
3.4 Powers of Building Societies.....	43
3.5 Meetings.....	46
3.6 Annual Accounts and Statement.....	46
3.7 Books and Records of Building Societies.....	47
3.8 Amalgamation of Societies and Transfer of Engagements.....	48
3.9 Disputes Resolution.....	49
3.10 Powers of the Registrar over Building Societies.....	50
3.11 Powers of the Central Bank.....	52
3.12 Dissolution and Liquidation of Building Societies.....	54
3.13 Disqualification of Officers.....	54
3.14 Conclusion.....	55

### **Chapter 4 - Microfinance Institutions**

4.1 Introduction.....	57
4.2 The Microfinance Act, 2006.....	57
4.3 Licensing.....	58
4.4 Governance of Microfinance Institutions.....	61
4.5 Supervision by Central Bank.....	67
4.6 The Deposit Protection Fund.....	69
4.7 Protection of Deposits.....	70
4.8 Liquidation of an Institution by the Central Bank.....	70
4.9 Right of Assignment.....	71
4.10 Power of the High Court.....	71

### **Chapter 5 - Other Institutions**

5.1 Kenya Post Office Savings Bank.....	73
5.2 Functions of the Bank.....	73

### **Chapter 6 - Agricultural Finance Corporation**

6.1 Introduction.....	79
6.2 Board of Directors.....	79
6.3 The General Manager.....	82
6.4 Execution of Documents.....	82
6.5 Powers of the Corporation.....	83
6.6 Funds of the Corporation.....	84
6.7 Reserve Fund.....	84
6.8 Loans to Farmers.....	85
6.9 Charge on the Land.....	85
6.10 Loans to Co-operative Societies.....	86
6.11 Rate of Interest.....	87
6.12 Waiver of Priority.....	87
6.13 Implied Covenants and Conditions in Mortgages.....	87
6.14 Withholding of Loan on Default of Debtor.....	87
6.15 Recovery on Default.....	89
6.16 Powers of the Corporation.....	90
6.17 Accounts.....	90
6.18 Dealing with Corrupt Acts.....	91
6.19 Rules .....	91
6.20 Regulations.....	92

### **Part II**

### **Chapter 7 - Banker Customer Relationship**

7.1 Definition of a Bank.....	95
7.2 Definition of a Customer.....	96
7.3 The Bank's Duties to Customers.....	101
7.4 Customer's Duties.....	112

## Law of Financial Institutions in Kenya

7.5	Liens, Appropriations and Combinations.....	114
7.6	Combination and Set Off.....	120
7.7	Limitations.....	122
7.8	Bank as Bailee.....	124
7.9	Termination of the Banker Customer Relationship.....	126

**Chapter 8 - Accounts**

8.1	Account opening – legal requirements.....	131
8.2	Types of Accounts.....	134
8.3	Types of Customer .....	139
8.4	Trust Accounts.....	143
8.5	Corporate Customers.....	147

**Chapter 9 - Cheques**

9.1	An Unconditional Order.....	154
9.2	Order and Bearer Cheques.....	156
9.3	Endorsement.....	157
9.4	Duties of the paying Bank.....	160
9.5	The Collection Bank.....	165
9.6	Criminal Sanctions on Bad Cheques.....	167

**Chapter 10 - Securities**

10.1	Stocks and Shares.....	169
10.2	Life Insurance Policy.....	171
10.3	Guarantees.....	175
10.4	Land as Security.....	180
10.5	Mortgage.....	180
10.6	Company Securities.....	190
10.7	The Prevention of the Title Clause (Romalpha Clause).....	196
10.8	Mareva Injunctions.....	197
10.9	Garnishee Order.....	199
10.10	Taking Security from Individuals.....	201

## Table of Contents

10.11	Minors.....	204
10.12	Non Est Factum.....	205

**Part III****Chapter 11 - Emerging Issues**

11.1	Cash Dispenser Machines (ATMs).....	209
------	-------------------------------------	-----

**Chapter 12 - Mobile Money Transfer Services**

12.1	Introduction.....	221
12.2	Communication Laws.....	222
12.3	Banking Laws.....	232
12.4	Technology Laws.....	236
12.5	Evidence.....	236
12.6	Unregulated Issues.....	238

**Chapter 13 - New Technology Banking**

13.1	Introduction.....	239
13.2	Internet Banking.....	239